

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**LAGUARDIA ASSOCIATES, LLP d/b/a CROWNE PLAZA
LAGUARDIA and LAGUARDIA ASSOCIATES, LLP d/b/a
CROWNE PLAZA LAGUARDIA, Debtor-in-Possession**

and

Case No. 29-CA-27410

NEW YORK HOTEL & MOTEL TRADES COUNCIL, AFL-CIO

Sharon Chau, Esq., Counsel for the General Counsel.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on June 20, 2006 in Brooklyn, New York. The Complaint herein, which issued on May 8, 2006, and was based upon an unfair labor practice charge that was filed on February 2, 2006 by New York Hotel & Motel Trades Council, AFL-CIO, herein called the Union, alleges that in about December 2005, LaGuardia Associates, LLP d/b/a Crowne Plaza LaGuardia, and LaGuardia Associates, LLP d/b/a Crowne Plaza LaGuardia Debtor-in-Possession, herein called the Respondent, unilaterally and without notice to the Union or an opportunity to bargain, reduced the work hours of its employee, Sajab Akber, and changed his work duties. Respondent failed to file an Answer to the Complaint herein.

In the absence of an Answer to the Complaint, Counsel for the General Counsel made a Motion for Default Judgment at the hearing, which I granted. I therefore make the following findings of fact and conclusions of law:

1. The unfair labor practice charge herein was filed by the Union on February 2, 2006 and a copy was served by regular mail on Respondent on about February 8, 2006.
2. At all material times, LaGuardia Associates, LLP, a limited liability company registered under the laws of the State of New York, with its principal office and place of business located at 104-04 Ditmars Boulevard, East Elmhurst, New York, has operated a hotel under the trade name Crowne Plaza LaGuardia, herein called the Crowne Plaza facility.
3. On or about October 29, 2004, Respondent Crowne Plaza filed a bankruptcy petition in the United States Bankruptcy Court for the Eastern District of Pennsylvania.
4. Since on or about October 29, 2004, Respondent Debtor has been a debtor-in-possession with full authority to continue operations and exercise all powers necessary to administer its business.
5. During the past twelve month period, which period is representative of its annual operations in general, Respondent Crowne Plaza, in the course and conduct of its business operations described above in paragraph 2, derived gross revenue in excess of \$500,000, and

purchased and received at the Crowne Plaza facility, goods and materials valued in excess of \$5,000 directly from points located outside the State of New York.

6. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

7. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

8. The following employees of the Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Engineering, Housekeeping, Banquet, Front Desk, Kitchen, Restaurant, Health Club, Lounge, and PBX Employees, employed by Respondent at its Crowne Plaza facility, excluding all Accounting and Human Resources Department Employees, office clerical employees, guards, managers, and supervisors as defined in the Act.

9. On September 29, 2004, the Union was certified by the Board as the exclusive collective bargaining representative of the Unit.

10. At all material times, the Union, by virtue of Section 9(a) of the Act, has been the exclusive representative of the Unit, for the purposes of collective bargaining.

11. Since on or about dates presently unknown in early December 2005, Respondent, unilaterally and without notice to the Union and an opportunity to bargain, reduced the work hours of its employee, Sajab Akber, and changed his work duties.

12. The subjects set forth in paragraph 11 relate to terms and conditions of employment of the unit and are mandatory subjects for the purpose of collective bargaining.

13. Respondent engaged in the conduct described above in paragraph 11 without prior notice to the Union, and without affording the Union an opportunity to bargain with Respondent with respect to such conduct and the effects of such conduct.

14. By the conduct described above in paragraphs 11 and 13, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(1) and (5) of the Act.

15. The unfair labor practices of Respondent, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist from engaging in these activities and that it be ordered to take certain affirmative action designed to effectuate the policies of the Act. As the Respondent unilaterally reduced the working hours of Sajab Akber and changed his work duties, without notice to the Union, the collective bargaining representative of the Unit, and without giving the Union an opportunity to bargain, I recommend that the Respondent be

ordered to return Akber to his former duties and working hours, and to reimburse him for any loss of earnings and other benefits that he suffered as a result of the change, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

5 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

10 The Respondent, LaGuardia Associates, LLP d/b/a Crowne Plaza LaGuardia and LaGuardia Associates, LLP d/b/a Crowne Plaza LaGuardia, Debtor-in-Possession, its officers, agents and representatives, shall:

1. Cease and desist from

15

(a) Making changes to the terms and conditions of employment of its Unit employees without prior notice to, and negotiations with, the Union.

20 (b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

25 (a) Make Akber whole for any loss of earnings and other benefits that he suffered as a result of the unilateral reduction in his working hours in about early December 2005 in the manner set forth in the Remedy section.

30 (b) Return Akber to the work schedule and duties that he had performed prior to the unilateral change in his working hours and work duties in about early December 2005.

35 (c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

40 (d) Within 14 days after service by the Region, post at its facility in East Elmhurst, New York copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in

45 ¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

50 ² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 1, 2005.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., July 6, 2006.

Joel P. Biblowitz
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT make changes to the terms and conditions of employment of our unit employees without prior notice to, and negotiations with, Hotel & Motel Trades Council, AFL-CIO ("the Union") and **WE WILL NOT** in any like or related manner interfere with, restrain or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole Sajab Akber for any loss of earnings or other benefits that he suffered as a result of our reducing his hours of work and changing his work duties without notice to, or prior negotiations with, the Union and **WE WILL** restore Akber's work hours and work duties to what they were prior to the unlawful change in these terms and conditions of employment in about early December 2005.

**LAGUARDIA ASSOCIATES, LLP d/b/a CROWNE PLAZA
LAGUARDIA and LAGUARDIA ASSOCIATES, LLP d/b/a
CROWNE PLAZA LAGUARDIA, Debtor-in-Possession
(Employer)**

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor

Brooklyn, New York 11201-4201

Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.